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10 CONSTITUTIONAL LAW SCHOLARS AND
11 *AMICI CURIAE* PROFESSORS OF CONSTITUTIONAL LAW,
12 ADMINISTRATIVE LAW, AND IMMIGRATION LAW

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN FRANCISCO DIVISION

17 COUNTY OF SANTA CLARA,

18 Plaintiff,

19 v.

20 DONALD J. TRUMP, President of the
21 United States of America, JOHN F. KELLY,
22 in his official capacity as Secretary of the
23 United States Department of Homeland
24 Security, JEFFERSON B. SESSIONS, in his
25 official capacity as Attorney General of the
26 United States, JOHN MICHAEL "MICK"
27 MULVANEY, in his official capacity as
28 Director of the Office of Management and
Budget, and DOES 1-50,

Defendants.

Case No. 17-cv-00574-WHO

**NOTICE OF MOTION AND
ADMINISTRATIVE MOTION OF
CONSTITUTIONAL LAW SCHOLARS
AND PROFESSORS OF
CONSTITUTIONAL LAW,
ADMINISTRATIVE LAW, AND
IMMIGRATION LAW FOR LEAVE TO
FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

vs.

DONALD J. TRUMP, President of the
United States, UNITED STATES OF
AMERICA, JOHN F. KELLY, Secretary of
United States Department of Homeland
Security, JEFFERSON B. SESSIONS III,
Attorney General of the United States, DOES
1-100,

Defendants.

Date: July 12, 2017
Time: 2:00 pm
Dep't: Courtroom 2
Judge: Hon. William H. Orrick

Date Filed: February 23, 2017

Trial Date: April 23, 2018

Case No. 3:17-cv-00485-WHO

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Raquel Aldana, Michelle Wilde Anderson, W. David
3 Ball, Lenni B. Benson, Gabriel J. Chin, William H.D. Fernholz, Katherine J. Florey, Gerald E.
4 Frug, Bill Ong Hing, Alison L. LaCroix, Sanford V. Levinson, Hiroshi Motomura, James Gray
5 Pope, Darien Shanske, Elissa Steglich, Michael Vitiello, Keith Whittington, Roxana Bacon, Alan
6 Brownstein, Erwin Chemerinsky, David S. Cohen, Seth Davis, Aziz Huq, M. Isabel Medina,
7 Keramet Reiter, Ozan Varol, and Deborah M. Weissman hereby move the Court for leave to file
8 an amicus brief in the above-captioned case in support of Plaintiffs' opposition to Defendants'
9 motion to dismiss. Defendants take no position on the request. A copy of the proposed amicus
10 brief is appended as an exhibit to this motion.

11 **I. STANDARD FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

12 The Court has broad discretion to permit third parties to participate in an action as amici
13 curiae. *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987); *Woodfin*
14 *Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at *3 (N.D. Cal.
15 Jan. 9, 2007). Participation of amici curiae may be particularly appropriate where legal issues in a
16 case have potential ramifications beyond the parties directly involved or where amici can offer a
17 unique perspective to aid the Court. *Sonoma Falls Dev., LLC v. Nev. Gold & Casinos, Inc.*, 272 F.
18 Supp. 2d 919, 925 (N.D. Cal. 2003).

19 **II. STATEMENT OF IDENTITY OF AMICI CURIAE**

20 Amici are among the legal scholars who previously filed separate amicus briefs in support
21 of Plaintiffs at the preliminary injunction stage. Amici Constitutional Law Scholars submitted an
22 amicus brief detailing the potential assault that Executive Order No. 13,768 (January 30, 2017)
23 (the "Executive Order" or "Order") makes on Our Federalism. See D.I. 69.* Amici Professors of
24 Constitutional Law, Administrative Law, and Immigration Law submitted an amicus brief

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26 * All docket numbers refer to the docket numbers in case number 3:17-cv-00485-WHO.

1 detailing the Separation of Powers problems presented by the Order. D.I. 68. Amici wish to offer
2 their expertise regarding the principles that inform whether Executive Order No. 13,768, 82 Fed.
3 Reg. 8799 (Jan. 25, 2017) (the “Executive Order” or the “Order”) is constitutional.

4 Amici Constitutional Law Scholars are (all institutional affiliations are for identification
5 purposes only):

- 6 • Raquel Aldana, McGeorge School of Law, University of the Pacific
- 7 • Michelle Wilde Anderson, Stanford Law School
- 8 • W. David Ball, Santa Clara School of Law
- 9 • Lenni B. Benson, New York Law School
- 10 • Gabriel J. Chin, University of California, Davis School of Law
- 11 • William H.D. Fernholz, University of California Berkeley School of Law
- 12 • Katherine J. Florey, University of California Davis School of Law
- 13 • Gerald E. Frug, Harvard Law School
- 14 • Bill Ong Hing, University of San Francisco School of Law
- 15 • Alison L. LaCroix, University of Chicago Law School
- 16 • Sanford V. Levinson, University of Texas School of Law
- 17 • Hiroshi Motomura, University of California Los Angeles School of Law
- 18 • James Gray Pope, Rutgers Law School
- 19 • Darien Shanske, University of California Davis School of Law
- 20 • Elissa Steglich, University of Texas School of Law
- 21 • Michael Vitiello, McGeorge School of Law, University of the Pacific
- 22 • Keith Whittington, Princeton University

23 Amici Professors of Constitutional Law, Administrative Law, and Immigration Law are
24 (all institutional affiliations are for identification purposes only):

- 25 • Roxana Bacon, University of Miami School of Law
- 26 • Alan Brownstein, University of California at Davis School of Law

- Erwin Chemerinsky, University of California, Irvine School of Law
- David S. Cohen, Thomas R. Kline School of Law, Drexel University
- Seth Davis, University of California, Irvine School of Law
- Aziz Huq, University of Chicago Law School
- M. Isabel Medina, Loyola University of New Orleans
- Keramet Reiter, University of California Irvine School of Social Ecology
- Ozan Varol, Associate Professor of Law, Lewis & Clark Law School
- Deborah M. Weissman, University of North Carolina School of Law

III. AMICI CURIAE’S EXPERTISE WILL BENEFIT THIS COURT

Due to the constitutional law issues presented by the Executive Order, Amici believe that their expertise will benefit the Court. In particular, Amici wish to offer their expertise regarding the Supreme Court’s jurisprudence on the Separation of Powers and the limits of the Federal Government’s authority to force State and local governments to administer federal law. Amici believe that their expertise may be of particular use to the Court given the role Federalism and the Separation of Powers play as a structural protection of individual liberty and political accountability and thus, by extension, the potential ramifications that the issues before the Court may have beyond the parties to the cases. Accordingly, Amici respectfully offer their analysis of these issues to assist the Court in its deliberations.

CONCLUSION

For the foregoing reasons, the above-listed amici respectfully request this Court’s leave to submit the attached Amicus Curiae brief.

1 June 28, 2017

BARTLIT BECK HERMAN PALENCHAR
& SCOTT LLP

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4 By: /s/ Nevin M. Gewertz

Nevin M. Gewertz[†]

5 Abby M. Mollen*

6 *Attorneys for Amici Curiae*
7 *Constitutional Law Scholars and Amici*
8 *Curiae Professors of Constitutional Law,*
9 *Administrative Law, and Immigration Law*
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24 [†] Admitted to practice in the United States District Court for the Northern District of Illinois.
25 Counsel understand that the Court's prior orders waiving *pro hac vice* requirements for
26 counsel submitting amicus briefs at the preliminary injunction stage remains in effect. *See*
27 D.I. 40 (Order Regarding Amicus Briefs) (waiving the *pro hac vice* requirements of Northern
District of California Local Rule 11-3 for attorneys admitted to practice and in good standing
in any United States District Court).

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2017, a copy of the foregoing Notice of Motion and Administrative Motion of Constitutional Law Scholars and Professors of Constitutional Law, Administrative Law, and Immigration Law for Leave to File an Amicus Curiae Brief in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss, and a Proposed Order were filed pursuant to the Court's electronic filing procedures using CM/ECF.

/s/ Nevin M. Gewertz

Nevin M. Gewertz